



KENTUCKY REGISTRY OF ELECTION FINANCE

Craig C. Dilger, Chairman
Terry Naydan, Vice-Chair
Reid Haire, Member
Robert D. Mattingly, Member
Chastity Ross, Member
Elizabeth G. Weber, Member

140 Walnut Street
Frankfort, Kentucky 40601-3240
Phone: (502) 573-2226
Fax: (502) 573-5622
www.kref.ky.gov

John R. Steffen
Executive Director
Emily Dennis
General Counsel

ADVISORY OPINION 2016-004

Any Advisory Opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the Advisory Opinion is required. See KRS 121.135(4).

September 21, 2016

VIA FACSIMILE 502.425.3431
AND FIRST CLASS U.S. MAIL

Bruce T. Linder
Executive Vice President
Kentucky Assn. of Health Care Facilities
9403 Mill Brook Rd.
Louisville, KY 40223-4001

**In re: KAHCF PAC - Permanent Committee/ Corporation Sponsorship of
Administrative Costs (AO 2016-004)**

Dear Mr. Linder:

This Advisory Opinion is sent in response to your recent request on behalf of the Kentucky Association of Health Care Facilities (KAHCF) and its sponsored permanent committee, KAHCF PAC. Your request, as clarified in a subsequent telephone conversation with Karen Bass, explains that the KAHCF, a trade association, plans to hold a fundraising event for KAHCF PAC at the KAHCF Annual Meeting to be held in November 2016. Individual KAHCF members will pay an entrance fee to attend the fundraising event, and all entrance fees collected will be reported by KAHCF PAC as contributions by the individuals attending. The KAHCF would like to ask corporations to sponsor certain costs of the fundraising event. To that end, you specifically ask whether it is permissible for corporations to donate drinks, food, prizes to be raffled and signage as part of KAHCF's administrative expenses for the fundraiser.

**In re: KAHCF PAC - Permanent Committee/ Corporation Sponsorship of Administrative Costs
(AO 2016-004)**

The Registry received your advisory opinion request on August 22, 2016. As required by KRS 121.135(5)(a), your request was posted for public comment on August 23, 2016. No public comments were received.

The core issue in your request is whether certain fundraising expenses (in this case, food, drinks, prizes, and signage for the KAHCF PAC fundraiser event) are properly considered administrative expenses within the meaning of KRS 121.150(21). Regarding contribution limits, KRS 121.150(21) specifically provides that “(n)othing in this section [KRS 121.150] shall be construed to restrict the ability of a corporation to administer its permanent committee insofar as its actions can be deemed not to influence an election as prohibited by KRS 121.025.” See KRS 121.150(21). The term “corporation” is not defined in the campaign finance law; however, under KRS 446.010(11), the term "corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association. Thus, for purposes of this analysis, the KAHCF is treated as a corporation.

Past interpretations of KRS 121.150(21) required a state PAC such as KAHCF PAC to reimburse a corporate sponsor for administrative expenses associated with the PAC. See, e.g. Ky. Op. Atty. Gen. 91-80. However, the United States District Court for the Eastern District of Kentucky recently ordered that corporations, LLCs, and unions are entitled to equal treatment in the exercise of a PAC option, including state PACs. *Protect My Check v. Dilger, et al.*, --- F.Supp.3d ---- (2016 WL 1306200). Under this ruling, the Registry has acknowledged, although corporate contributions to a state PAC remain prohibited under KRS 121.150(20), a corporation may sponsor and otherwise administer its state PAC, paying administrative expenses of the PAC, using corporate funds.

A PAC cannot be effectively administered without fundraising efforts. Thus, KAHCF may use its general treasury funds to administer the KAHCF PAC fundraising event, which includes the purchase of food, drinks, supplies and signage, so long as no company funds are contributed directly or otherwise commingled in the KAHCF PAC account. In addition, the KAHCF may also solicit and receive donations of drinks, food, and signage, again so long as no corporate funds are contributed directly or otherwise commingled in the KAHCF PAC account, and participating corporate co-sponsors are publicly recognized at the event.

The KAHCF may not, however, use its funds or otherwise accept corporate donations for prizes to be raffled, or other inducements to donors, to support the KAHCF PAC. In general, donations of items to be offered in exchange for contributions are considered in-kind contributions, which includes the payment for or provision of certain goods and services valued at more than one hundred dollars (\$100) in the aggregate. See KRS 121.015(6)(b), (c) and (d).

In addition, regarding raffles, generally be advised that the Registry has no jurisdiction to determine whether the KAHCF may conduct raffles at a KAHCF PAC fundraising event. A “raffle” is defined by KRS Chapter 238 as a form of “charitable gaming” that falls under the

**In re: KAHCF PAC - Permanent Committee/ Corporation Sponsorship of Administrative Costs
(AO 2016-004)**

jurisdiction of Kentucky's Department of Charitable Gaming. The Registry understands that KRS Chapter 238 permits charitable gaming only to benefit common schools and certain charitable organizations under the Internal Revenue Code (IRC). A permanent committee is not a charitable organization, but rather a political organization under IRC § 527, and therefore may violate KRS Chapter 238 by holding a "raffle" to collect campaign contributions. For more information, you may contact the Department of Charitable Gaming.

Please keep in mind that this Advisory Opinion is based on the specific facts set forth in your written request, does not cover past conduct, and only may be applied to cover the conduct in the transaction you describe. If you have any questions concerning this Advisory Opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,



EMILY DENNIS
General Counsel

Cc: Registry Members
John R. Steffen, Executive Director